

Delhi High Court

Union Of India

vs

R.S. Khan

on 7 October, 2010

Author: S. Muralidhar

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 9355/2009 & CM No. 7144/2009

**UNION OF INDIA Petitioners Through: Ms. Maneesha Dhir
with**

Ms. Preeti Dalal, Advocate.

versus

**R.S. KHAN Respondents Through: Mr. Nandan K. Jha,
Advocate.**

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported Yes in Digest?

ORDER

07.10.2010

1. This petition is directed against the order dated 8th May 2009 of the Central Information Commission („CIC“) allowing the appeal of the Respondent and directing the Central Public Information Officer („CPIO“) in the office of the Controller General of Defence Accounts („CGDA“) to provide to the Respondent within 10 working days the information sought by her.

2. On 5th December 2008, the Petitioner applied to the CPIO in the CGDA seeking information in respect of 8 matters arising from the disciplinary proceedings conducted against her for a major penalty, which had recently been concluded. The Respondent had been awarded the penalty of „censure“ in those disciplinary proceedings. By an order dated 7th January 2009, the CGDA rejected the request stating that the information cannot be provided as it attracted Sections 8(i)(e), 8(i)(g) and 8(i)(j) of the Right to Information Act, 2005 („RTI“ Act, 2005). Inter alia, it was observed as under:

"Notings in case of a disciplinary proceeding contain the views and opinions of the various authorities which are fiduciary in nature and the views and opinions, if made open, might antagonize the charged officer. It may also lead to the danger of the lift of the officials who have made those remarks. Further the disciplinary proceedings are conducted in an objective and fair manner with the involvement of lot of agencies which include CGDA, Ministry of Defence (Finance), and DoPT. Further disclosing entire set of notings which includes the personal information/opinion of the officials at various stages does not have any relationship with any public activity or interest."

3. The Appellate Authority concurred with the view of the CPIO and dismissed the Respondent's appeal on 4th March 2009. Thereafter, the Respondent preferred an appeal to the CIC.

4. The CIC observed that the expression „fiduciary relationship“ in Section 8(1)(e) of the RTI Act, 2005 could not apply to the relationship between a government and its own employees. It did not cover notings in a public document. Likewise, the reference to Section 8(1)(g) of the RTI Act was also held to be misplaced. It was held that notings made on files as part of discharge of official functions was a public activity. The CIC disagreed with the view expressed by the CPIO and the Appellate Authority that the conduct of disciplinary proceedings against the Petitioner that the notings and the files during the disciplinary proceedings did not have any relationship with public activity or public interest.

5. Ms. Maneesha Dhir, learned counsel for the Petitioner reiterated the submissions made before the CIC and supported the order of the CPIO and the Appellate Authority. She again referred to Section 8(1)(e), 8(1)(g) and 8(1)(j) of the RTI Act, 2005 and submitted that the information sought was covered under each of these provisions and was therefore exempt from disclosure. It was submitted that notings on files do not fall within the definition of information under Section 2(f) RTI Act, 2005. Reliance is placed on the decisions of the Supreme Court in [State of Bihar v.](#)

[Kripalu Shankar](#) (1987) 3 SCC 34, [Sethi Auto Service Station v. Delhi Development Authority](#) 2009 (1) SCC 180, [Khanapuram Gandaiah v. Administrative Officer](#) (2010) 2 SCC 1 and Union of India v. Central Information Commission 2009 (165) DLT

559.

6. As regards the first point urged, this Court is unable to accept the submission made on behalf of the Union of India that file notings, which are in the form of the views and comments expressed by the various officials dealing with the files, are not included within the definition of „information“ under Section 2(f) of the RTI Act, 2005. Section 2(f) reads as under:

"(f) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"

7. It is clear that legislative intent is to give a wide interpretation to the term „information“ under Section 2(f) of the RTI Act, 2005. This is evident from the inclusion of "records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders" within the broad definition of "information".

8. The submission made by learned counsel for the Petitioner also stands contradicted by an office memorandum dated 28th June 2009 issued by the Department of Personnel & Training („DoPT“) to the following effect:

"OFFICE MEMORANDUM

Subject : Disclosure of „file noting“ under the Right to Information Act, 2005.

The undersigned is directed to say that various Ministries/Departments etc. have been seeking clarification about disclosure of file noting under the Right to Information Act, 2005. It is hereby clarified that file noting can be disclosed except file noting containing information exempt from disclosure under section 8 of the Act.

2. It may be brought to the notice of all concerned."

9. Unless file notings are specifically excluded from the definition of Section 2(f), there is no warrant for proposition that the word „information“ under Section 2(f) does not include file notings.

10. The next submission to be dealt with is that information contained in the files in the form of file notings made by the different officials dealing with the files during the course of disciplinary proceedings against the Petitioner were available to the Union of India in a „fiduciary relationship“ within the meaning of Section 8(1)(e) of the RTI Act. This Court concurs with the view expressed by the CIC that in the context of a government servant performing official functions and making notes on a file about the performance or conduct of another officer, such noting cannot be said to be given to the government pursuant to a `fiduciary relationship“ with the government within the meaning of Section 8(1)(e) of the RTI Act, 2005. Section 8(1)(e) is, at best, a ground to deny information to a third party on the ground that the information sought concerns a government servant, which information is available with the government pursuant to a fiduciary relationship, that such person, has with the government, as an employee.

11. To illustrate, it will be no ground for the Union of India to deny to an employee, against whom the disciplinary proceedings are held, to withhold the information available in the Government files about such employee on the ground that such information has been given to it by some other government official who made the noting in a fiduciary relationship. This can be a ground only to deny disclosure to a third party who may be seeking information about the Petitioner in relation to the disciplinary proceedings held against her. The Union of India, can possibly argue that in view of the fiduciary relationship between the Petitioner and the Union of India it is not obligatory for the Union of India to disclose the information about her to a third party. This again is not a blanket immunity against disclosure. In terms of Section 8(1)(e) RTI Act, the Union of India will have to demonstrate that there is no larger public interest which warrants disclosure of such information. The need for the official facing disciplinary inquiry to have to be provided with all the material against such official has been explained in the judgment of the Division Bench of this Court in [Union of India v. L.K. Puri](#) 151 DLT 2008, as under:

"The principle of law, on the conjoint reading of the two judgments, as aforesaid, would be that in case there is such material, whether in the form of comments/findings/ advise of UPSC/CVC or other material on which the disciplinary authority acts upon, it is necessary to supply the same to the charge sheeted officer before relying thereupon any imposing the punishment, major or minor, in as much

as cardinal principle of law is that one cannot act on material which is neither supplied nor shown to the delinquent official. Otherwise, such advice of UPSC can be furnished to the Government servant along with the copy of the penalty order as well as per Rule 32 of the CCS(CCA) Rules."

12. [In Dev Dutt v. Union of India](#) (2008) 8 SCC 725, the Supreme Court mandated communication of not only all entries in ACR but even whether the entry of a grade in an ACR, in comparison to the previous years' entry resulted in the lowering of the grade. A reference may be made to paras 39 and 45 of the said judgment which read as under: "39. In the present case, we are developing the principles of natural justice by holding that fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This in our opinion is the correct legal position even though there may be no Rule/G.O. requiring communication of the entry, or even if there is a Rule/G.O. prohibiting it, because the principle of non-arbitrariness in State action as envisaged by Article 14 of the Constitution in our opinion requires such communication. Article 14 will override all rules or government orders."

45. In our opinion, non-communication of entries in the Annual Confidential Report of a public servant, whether he is in civil, judicial, police or any other service (other than the military), certainly has civil consequences because it may affect his chances for promotion or get other benefits (as already discussed above). Hence, such non-communication would be arbitrary, and as such violative of Article 14 of the Constitution."

13. The decision in [State of Bihar v. Kripalu Shankar](#) was rendered at a time when no RTI Act existed. The understanding of 'privileged' information in 1987 will have to give way to the legislative intent manifest in the RTI Act, enacted eighteen years later. The decision in Sethi Auto Services was again not in the context of the RTI Act. It concerned the termination of a petrol pump dealership. In Khanapuram Gandaiah, the Petitioner was seeking to know from a Judicial Officer as to why he decided an appeal "dishonestly". The said decision is plainly distinguishable on facts.

14. In the considered view of this Court, the Union of India cannot rely upon Section 8(1)(e) of the RTI Act, 2005 to deny information to the Petitioner in the present case.

15. It may be further added that the Respondent has already retired on 31st October 2009. Further, even the censure awarded to the Petitioner has been quashed by this Court by an order dated 9th August 2010 in Writ Petition (Civil) No. 12462 of 2009. The Respondent has also placed on record a copy of the order passed by the CGDA treating the suspension period as duty period, and directing the release of full pay and allowances to the Respondent for the said period.

16. In light of the above developments, this Court finds no merits in any of the apprehensions expressed by the CPIO in the order rejecting the Respondent's application with reference to either Section 8(1)(g) of the RTI Act 2005. The disclosure of information sought by the Petitioner can hardly endanger the life or physical safety of any person. There must be some basis to invoke these provisions. It cannot be a mere apprehension.

17. As regards Section 8(1)(j), there is no question that notings made in the files by government servants in discharge of their official functions is definitely a public activity and concerns the larger public interest. In the present case, Section 8(1)(j) was wrongly invoked by the CPIO and by the Appellate Authority to deny information to the Respondent.

18. This Court finds that no error has been committed by the CIC in passing the impugned order. Consequently, the writ petition is dismissed with costs of ` 5,000/-, which will be paid by the Petitioner to the Respondent, within a period of four weeks. Interim order dated 27th May 2009 stands vacated. Application also stands dismissed S. MURALIDHAR, J.

OCTOBER 07, 2010

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